

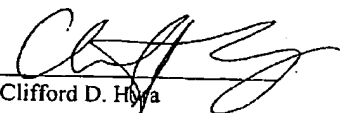
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On 9/4/08
(Date)


Clifford D. Hoya

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of VIA FAX: 571-273-8300

Flemming Kjaergaard Christensen

Serial No.: 10/577,976 Art Unit: 1655

Filed: April 2, 2007 Examiner: Qiuwen Mi

For: COMPOSITION FOR THE COSMETIC TREATMENT OF AGE-RELATED
DERMATOLOGICAL SYMPTOMS

RESPONSE

To the Director of Patents and Trademarks

Sir:

In response to the office action mailed August 4, 2008, the Applicant provisionally elects Group I with related claims 1-8 and 11 and elects as Species 1 a topical lotion, with claims 1-5, 7, and 11 of Group I readable thereon, and traverses the requirement for restriction.

The invention is unitary. MPEP § 1850 states that "In applying PCT Rule 13.2 to ... national stage applications under 35 U.S.C. 371, examiners should... permit retention in the same application... claims to the categories which meet the requirements of PCT Rule 13.2. Chapter 10 of the International Search and Preliminary Examination Guidelines also contains

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examples concerning unity of invention.”

MPEP § 1850 continues “The method for determining unity of invention under PCT Rule 13 shall be construed as permitting, in particular, the inclusion of any one of the following combinations of claims of different categories in the same international application: (A) In addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product, and an independent claim for a use of the said product... A process is specially adapted for the manufacture of a product if it inherently results in the product... The words “specially adapted” are not intended to imply that the product could not also be manufactured by a different process. “

Claim 9 is clearly a claim for a process specially adapted for the manufacture of the product of independent Claim 1. Claim 9 inherently results in the product of Claim 1. Claim 10 is clearly a claim for a use of the product of Claim 1. Therefore, “PCT rule 13 shall be construed as permitting the inclusion” of this combination of claims.

MPEP § 1850 also states “Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor maintained on the basis of a narrow, literal or academic approach. There should be a broad, practical consideration of the degree of interdependence of the alternatives presented... For determining the action to be taken by the examiner between these two extremes, rigid rules cannot be given and each case should be considered on its merits, the benefit of any doubt being given to the applicant.”

It is respectfully submitted that, giving the benefit of the doubt to the Applicant and in light of the degree of interdependence between the groups of claims identified by the Examiner, and considering that Rule 13 specifically permits the inclusion of the combination of claims involved in the present Application, the restriction requirement is improper and should be withdrawn.

CONCLUSION

Reconsideration and withdrawal of the restriction requirement are requested. Allowance of the application is requested.

Respectfully,



James C. Wray, Reg. No. 22,693
Clifford D. Hyra, Reg. No. 60,086
1493 Chain Bridge Road, Suite 300
McLean, Virginia 22101
Tel: (703) 442-4800
Fax: (703) 448-7397

September 4, 2008